IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO.: 5:01-CR-77-H NO.: 5:10-CV-102-H

LAWRENCE TERRELL ROGERS,)	
)	
Petitioner,)	
)	
)	
V.)	ORDER
)	
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter is before the court, pursuant to Rule 4 of the rules governing § 2255 cases, for examination of petitioner's § 2255 Motion to Vacate, Set Aside or Correct Sentence, filed April 15, 2010 [DE #64]. Petitioner was previously convicted of conspiracy to distribute and possession with the intent to distribute more than fifty (50) grams of cocaine base, and sentenced to 192 months' imprisonment. Subsequently, this court issued an order granting petitioner's motion for sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) and amending the term of imprisonment to 154 months on March 16, 2009.

On October 21, 2004, petitioner filed his first § 2255 petition seeking to set aside his sentence. By order filed June 1, 2005, petitioner's § 2255 motion was denied. It is clear that

petitioner's current motion before the court is appropriately classified as a second or consecutive § 2255 petition.

"A second or successive motion must be certified . . . by a panel of the appropriate court of appeals" 28 U.S.C. § 2255; accord United States v. Lawton, No. 03-7290, 2003 U.S. App. LEXIS 26174, at **1 (4th Cir. Dec. 23, 2003) (per curiam) (affirming in its unpublished opinion the district court's dismissal of a successive motion to vacate for lack of certification as required by § 2255).

Thus, petitioner's motion [DE #64] is hereby DISMISSED for lack of jurisdiction. This dismissal is without prejudice to petitioner's right to apply to the Fourth Circuit for leave to file a second or successive § 2255 petition.

This $\frac{76}{6}$ day of June 2010.

MALCOLM J./HOWARD

Senior United States District Judge

At Greenville, NC GEB